TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 117.

THE DISTRICT OF COLUMBIA, PLAINTIFF IN ERROR,

vs.

ALICE BROOKE.

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED JULY 3, 1907.

(20,776.)

(20,776.)

SUPREME COURT OF THE UNITED STATES.

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Supreme Court of the District of Columbia

Law No. 48870.

ALICE BROOKE, PETITIONER

vs.

THE DISTRICT OF COLUMBIA, RESPONDENT.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

BE IT REMEMBERED, That in the Supreme Court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause to wit:

1 *Petition.*

Filed October 17, 1906.

In the Supreme Court of the District of Columbia.

Law No. 48870.

ALICE BROOKE, PETITIONER

vs.

THE DISTRICT OF COLUMBIA, RESPONDENT.

To the Supreme Court of the District of Columbia, holding a Circuit Court:

The Petition of Alice Brooke respectfully represents to the Court as follows:

First: That she is now a resident of Silver Spring in the State of Maryland. That the respondent is a Municipal Corporation duly created.

Second: That petitioner is the owner in fee simple of sub lot numbered twenty-six (26) in square numbered seven hundred and seventy (770) in said District, improved by five dwelling

houses numbered 1243, 1245, 1247, 1249 and 1251 Third Street, Southeast.

Third: By Act of Congress entitled "An Act to provide for the drainage of lots in the District of Columbia," approved May 19, 1896, it is provided that each original lot or subdivisional lot situated on any street in the District of Columbia where there is a public sewer shall be connected with said sewer * * * and if such original lot or subdivisional lot is situated on any street in said District where there is a public sewer and watermain, such original lot or subdivisional lot shall
2 be connected with said sewer and also with said watermain.

Sections 2 and 3 of said Act require the Commissioners of said District to notify the resident owner or owners of every lot required by said Act to be so connected, to have said work done, and in the event of the neglect to make such connections within a prescribed time such owner or owners is to be deemed guilty of a misdemeanor and on conviction in the Police Court of said District is to be published by a fine for each day after the expiration of the limited prescribed time till the connections are made.

By the 4th section of said Act it is provided that in case the owner of such lot being a non resident of the District of Columbia cannot be found within said District, the said Commissioners are to give notice, by publication twice a week for two weeks in some daily newspaper published in the city of Washington, to such owner directing the connection of such lot with such sewer or sewer and watermain, as the case may be, with the proviso, however, that if the residence or place of abode of said non-resident owner be known, or ascertainable on reasonable inquiry, then a copy of the aforesaid notice is to be mailed to said non resident, legal postage prepaid, addressed at his said residence or abode, and in case such owner shall neglect to comply with the notice within thirty days, said Commissioners are to cause such connections to be made, the expense to be paid out of the emergency fund; such expense with the necessary expenses of advertisement shall be assessed as a tax against such lot, which tax shall be carried on the regular tax roll of
3 the said District and shall be collected in the manner provided for the collection of other taxes.

Fourth: By virtue of said Act it is claimed on the part of the respondent, that certain connections, respecting said parcel of land, were made with the watermain and sewer in the street on which said lot fronts and respondent has assessed or caused to be assessed the charge therefor at the sum of $470.77 and have caused said assessment to be placed against said parcel of land

on a book in the office of the Assessor of Taxes for said District, designated "Special Reimbursable Tax Ledger" in the name of your petitioner as owner; said assessment or tax against said lot will appear by bill furnished petitioner by the Collector of Taxes for said District hereto annexed as part hereof.

Fifth: Petitioner avers that said assessment or tax against said lot or parcel of land is illegal in its entirety and beyond the power of the respondent to assess or collect, in this that respondent had no jurisdiction of aforesaid property under aforesaid Act of Congress, to require the connection of said property, or cause the same to be done, with the sewer and watermain in the street in front of said property; the said Act of Congress being unconstitutional and void because it discriminates between owners of real estate in said District; the said Act not being uniform and capable of universal enforcement.

Sixth: Upon information and belief petitioner further avers that assuming said Act is valid, which is denied, still said assessment or tax is void in its entirety in this that the provisions of the fourth section of said Act—which are a prerequisite to the causing of said work to be done by the Commissioners—
4 were not complied with in the following particulars—

(a) It does not appear that petitioner was a non-resident at the time the work was done for which aforesaid assessment was made or that she could not be found in said District.

(b) It does not appear that the Commissioners of said District, either as a board of individuality, gave the legal and official notice to the owner of said property as is required by said Act.

(c) It does not appear what the different items are, in connection with said work, which go to make the assessment levied against said property, nor does it appear that proper proposals were obtained after proper notice or that the contract for the work was given to the lowest bidder, or that the contract given was made by the Commissioners of said District sitting as a board, all of which petitioner contends is absolutely necessary for a valid assessment.

(d) That in and by the purported published notice to said petitioner it is not stated when the period of thirty days within which the connections were to be made would begin to run.

(e) The aforesaid assessment has not been placed on the regular tax rolls of said District.

Seventh: That petitioner, notwithstanding she has always, during her ownership of said property, which has been continuously since August 8, 1896, kept the same in good repair and condition, and promptly and regularly paid the taxes and

5 assessments legally levied thereon, it was only recently she learned that respondent carries the aforesaid assessment or tax on its said ledger against said property, and said property is liable to be sold for the non-payment thereof, and petitioner respectfully contends that the said Act of Congress is unconstitutional and void, and that said tax or assessment is illegal and void, not only because the Act is unconstitutional and void under which the work is alleged to have been done, but also for the reason that, assuming said Act to be valid, the Commissioners did not comply with the terms and conditions of said Act as above set forth, and that by reason of said erroneous and illegal assessment standing on respondent's said record in its office against her said property she is injured and wronged in her right of property and has no appeal from said illegal action of said respondent.

Wherefore, the premises considered, petitioner respectfully prays:

That the United States Writ of Certiorari commanding the District of Columbia, respondent herein, to certify immediately to this Court, a copy of said Statute or Act of Congress and of each and every record and paper, and part of record and paper, in its custody, relating in any manner to charges or taxes or assessments assessed in the name of petitioner against any part of the real estate hereinbefore referred to, purporting to be charges, assessments or taxes levied under the Act of Congress of May 19, 1896, titled as aforesaid, together with a full copy of every notice, return, advertisement, contract, minutes of

6 board meeting or meetings of said Commissioiners, specification, drawing, blue-print, assessment entry on tax book, name of tax book, and of such minutes or proceedings had by it concerning said matter.

2. That upon coming in of said return, after hearing, the alleged assessment or charge or tax be quashed and annulled by the judgment of this Honorable Court.

3. That petitioner may have such other and further relief in the premises as the justice of the case may require and to the Court seem proper.

ALICE BROOKE.

JNO. RIDOUT,
GEO. C. GERTMAN,
Attorneys for Petitioner.

CITY OF WASHINGTON, *District of Columbia, ss:*

I, Alice Brooke, do solemnly swear that I have read the above petition by me subscribed and know the contents thereof; that

the facts therein stated upon my personal knowledge are true and those stated upon information and belief I verily believe to be true.

ALICE BROOKE

Subscribed and sworn to before me this 17th day of October, A. D. 1906.

CLARENCE F. DONOHOE,
Notary Public, D. C.

[SEAL]

7 *Rule to Show Cause.*

Filed October 17, 1906.

In the Supreme Court of the District of Columbia.

At Law, No. 48870

ALICE BROOKE,

vs.

THE DISTRICT OF COLUMBIA.

Upon the petition filed herein it is this eighteenth day of October, 1906, ordered:

That the respondent show cause, if any it has before this Court on Friday, October 26, 1906, why the prayer of said petition for a writ of certiorari should issue should not be granted; provided a copy of this order be served upon the said respondent on or before October 20th 1906.

THOS. H. ANDERSON,
Justice.

Marshal's Return.

Served copy of the within order on Henry B. F. Macfarland one of the Board of Commissioners of the defendant—Oct. 18, 1906.

AULICK PALMER,
Marshal.

8

8 PART I.

Answer to Rule.

Filed November 23, 1906.

In the Supreme Court of the District of Columbia.

At Law, No. 48870.

ALICE BROOKE, Petitioner,

vs.

DISTRICT OF COLUMBIA.

The return of the respondent, the District of Columbia, to the rule issued in the above entitled cause respectfully shows as follows:

1 and 2. It admits the allegations contained in paragraphs 1 and 2 of the petition.

3. Respondent further says that the matter set forth in paragraph three are matters of law, which are proper to be decided by the Court and which the petitioner is not required to answer.

4. Respondent admits the allegations of paragraph four.

5. Respondent says that the said assessment or tax complained of is a legal and proper tax and the defendant had a right to make the same against the property involved and to require the said property to be connected with the sewer and the water-main in the street in the front thereof; that the said Act of Congress is constitutional and legal.

6. Respondent asserts the said assessment or tax as a proper or a legal tax, and that provisions of the said Act of Congress referred to in the said petition, particularly those of the 4th section of the said Act have been strictly complied with.

a. Respondent says that diligent search was made by
9 the officers and agents of the respondent to find the said petitioner within the District of Columbia, but she could not be found there after such diligent search. That the petitioner was informed and believed and still believes that the said petitioner was at the time of the performance of the acts complained of, and is now a citizen of the State of Maryland, and resides and did reside at Silver Hill, Maryland.

b. Respondent further says that the Commissioners of the District of Columbia through their officers and agents did give

legal and official notice to the said petitioner as required by the said Act of Congress. That notice was given by publication as required by the said Act and said notice was also sent to the said petitioner at Silver Hill, Maryland, postage prepaid by registered letter, on March 14, 1903, and was received by the said petitioner on March 16, 1903; the registry return receipt with the signature of the petitioner, a copy of which is filed herewith as exhibit hereto and is prayed to be read as a part hereof, and the original thereof will be exhibited to the Court on the hearing of said rule.

c. That the respondent caused certain plans and specifications for said work, to connect the said premises with the water-main and sewer, to be prepared and bids and proper proposals thereunder were duly called for by public advertisement, and a number of bids were made by different individuals for the said work, and the contract was duly let to the lowest bidder by the Commissioners for the said District, acting as a Board of Commissioners.

10 d. They deny the allegation of this paragraph, that the published notice to the petitioner notifying her to connect the said premises with the said water-main and sewer, and called upon her to do so "within thirty days from this notice."

e. That the said assessment complained of has been placed upon the regular tax-roll of the District of Columbia, which consists of ledgers, and said assessment is contained in the "special reimbursable tax-ledger" which is the proper roll on which to place said assessment, and is the only place where such assessments are carried.

7. In answer to paragraph 7, respondent says that the matters therein contained are immaterial, or matters of law. In answer to that portion of said paragraph which alleges that the Commissioners did not comply with the terms and conditions of said Act, respondent says that they did comply with the terms and conditions of said Act and petitioner is now barred by Statute of Limitations, the said assessment having been made on September 9, 1903.

8. As a further return to said petition, respondent files herewith as a part hereof marked "Return Part II" copies of record in the possession of your respondent pertaining to the said assessment, to wit:

1. Registry return receipt with signature of petitioner.

2. Copy of advertisement, notifying petitioner to connect with water-main and sewer.

3. Order of Commissioners to have the work performed.

4. Request of Inspector of Plumbing that bids for the work be advertised for.

5. Copy of the advertisement asking for bids for the
11 work.

6. List of bidders and prices bid.

7. Order of Commissioners accepting bid of Freund & Anderson.

8. Plats of premises (2).

9. Copy of assessment.

HENRY B. F. MACFARLAND,
HENRY L. WEST,
JOHN BIDDLE
Commissioners, D. C.

E. H. THOMAS,
F. H. S., Atty.

DISTRICT OF COLUMBIA, *ss:*

Henry B. F. Macfarland, Henry L. West and John Biddle, being duly sworn, say they are the Commissioners for the District of Columbia, and have read the return subscribed as such Commissioners and know the contents thereof; that the matters therein stated on their personal knowledge are true, and those stated on information and belief, they believe to be true.

HENRY B. F. MACFARLAND,
HENRY L. WEST,
JOHN BIDDLE,
Commissioners, D. C.

Subscribed and sworn to before me this ninth day of November, 1906.

WILLIAM TINDALL,
[SEAL] *Notary Public, D. C.*

12 PART II.

Filed November 23, 1906.

Copy.

Registry Return Receipt. Form No. 1548

Received from the Postmaster at.....3/14 03.....

Registered (Parcel) No. 16943..FROM POST OFFICE AT WASHINGTON, D. C.

Addressed to.....Miss Alice Brook.....
(Name of addressee)

Date.. March 16, 1903.

When delivery is made to an agent of the addressee, both addressee's name and agent's signature must appear in this receipt.

.....Miss Alice Brook.....
(Signature or name of addressee.)

.....
(Signature of addressee's agent.)

A registered article must not be delivered to any one but the addressee, except upon addressee's written order. When the above receipt has been properly signed, it must be postmarked with name of delivering office and actual date of delivery and mailed to its address, without envelope or postage.

This card must be neatly and correctly made up and addressed to the postoffice where the article is registered.

The postmaster must deliver the registered article, must see that this card is properly signed, postmarked, and mailed to the sender.

(Washington, D. C.)
(Rec'd. Mar. 17)
(9 P. M.)
(1903.)

Postmark of Delivery Office.

(Silver Hill)
(Mar. 17)
(1903)
(Md.)

And date of Delivery.

POST OFFICE DEPARTMENT.
Official Business.
Penalty of $300 for private use.
RETURN TO
Name of sender.....Health Dept.
Street and number of D. Commrs.
or Postoffice Washington, D. C.
Box.

13 Filed November 23, 1906.

EXECUTIVE OFFICE
COMMISSIONERS OF THE DISTRICT OF COLUMBIA.
WASHINGTON.

November 3, 1906.

I hereby certify that the following notice to connect sewer and watermain, was published in the Washington Evening Star, on March 11th, 12th, 18th and 19th, 1903:

OFFICE OF THE COMMISSIONERS OF the District of Columbia, Washington, March 11, 1903. Notice to connect lots in the city of Washington, District of Columbia, with sewers and watermains: To * * * Alice Brooke, owner of lot 26, in square 770 (embracing premises known as 1243, 1245, 1247, 1249 and 1251 3d street southeast); * * * You, and each of you, are hereby notified to connect the lot or lots above mentioned, and owned by you, respectively, with the public sewer and watermain in such a manner that any and all drainage of such lots, whether water or liquid refuse of any kind, shall flow into said sewer; the work to be done in accordance with the regulations governing plumbing and house drainage in the District of Columbia, and in case you shall fail or neglect so to do within thirty days from this notice the Commissioners of the District of Columbia will cause such connection to be made, and will assess the expense of the same, together with the expense of this advertisement, as a tax against each lot aforesaid, respectively, according to the provisions of the Act of Congress entitled "An act to provide for the drainage of lots in the District of Columbia," approved May 19, 1896. H. B. F. MACFARLAND, HENRY L. WEST, JOHN BIDDLE, Commissioners of the District of Columbia.

WILLIAM TINDALL,
Secretary to the Board of Commissioners of the District of Columbia.

14 Filed November 23, 1906.

C. O. 240267-I

EXECUTIVE OFFICE
COMMISSIONERS OF THE DISTRICT OF COLUMBIA.
WASHINGTON, May 19, 1903.

Ordered:

That the owners of the following described premises having been notified by publication, in accordance with law, to connect their premises with the public sewer and watermain and having failed to make such connections within the period specified by law, the necessary work will be done by the District of Columbia in so far as the appropriation to provide for the drainage of lots in the District of Columbia will permit and the cost thereof will be assessed against the respective premises as provided by law, viz:

Lot 26, square 770 (embracing premises known as 1243, 1245, 1247, 1249, and 1251 3rd street, southeast), Alice Brooke, owner.

* * * * *

Official copy furnished Engineer Department.

By order,

WILLIAM TINDALL,
Secretary.

[SEAL]
Official Copy
W. TINDALL, *Sec'y.*

15 Filed November 23, 1906.

OFFICE OF THE
ENGINEER COMMISSIONER OF THE DISTRICT OF COLUMBIA,
WASHINGTON

June 18th, 1903.

THE HONORABLE COMMISSIONERS, (through Capt. Harding.)

GENTLEMEN: I have the honor to request that the enclosed advertisement be placed in the daily papers. The work proposed to be contracted for is ordered under date of May 19th, 1903, (C. O. 240267-1) E. D. 44291, and the cost of the same will be assigned against the property under the provisions of the Act for the "Drainage of Lots." It is also presumed that the cost for advertising may be equitably charged against the property.

Very respectfully,

H. B. DAVIS,
Inspector of Plumbing, D. C.

[SEAL]
Official Copy
W. TINDALL, *Sec'y.*

16 Office, Commissioners, District of Columbia, Washington, D. C., June 19th, 1903, SEALED PROPOSALS will be received at this office until 12 M, Saturday, June 27th, 1903, for connecting certain premises with sewer and watermain. Forms, specifications and necessary information may be obtained at this office. Henry B. F. Macfarland, Henry L. West, John Biddle, Commissioners of the District of Columbia.

[SEAL]
Official Copy.
W. TINDALL, *Sec'y.*

17 Filed November 23, 1906.

Bids for the work of connecting premises 1243 to 1251, inclusive, 3d St. S. E., being lot 26, Square 770, as per advertisement of March 11-19, 1903, were received as follows:

NAME	AMT. OF BID.
Wm. Rothwell & Son	$627.00
The E. F. Brooks Co.	593.20
Hutchinson & McCarthy	575.00
Dunegan Plumbing Co.	548.
Freund & Anderson	470.77

18 Filed November 23, 1906.

E. D. 44913

EXECUTIVE OFFICE
COMMISSIONERS OF THE DISTRICT OF COLUMBIA,
WASHINGTON.

June 30, 1903.

Ordered:

That the proposal of Freund and Anderson under date June 26, 1903, to furnish all the necessary materials and labor and perform the following work in strict accordance with the specifications, at the prices given below, are hereby accepted:

* * * * *

For connecting 5 premises Nos. 1423 to 1251, inclusive, 3rd street, S. E., located on lots 26, square 770, with public sewer and water main; furnishing for each premises a water closet (Class I), a water closet enclosure complete and a cesspool; new G. I. gutters and down spouts on rear of 1245 to 1251, inclusive, and rehanging gutter on rear of 1243; a 4-inch house sewer and 3-4″ water supply line will be installed in 3 premises and repairs to fenses will be made, together with all fittings, connections, materials and labor, necessary to complete, for the sum of $470.77.

Official copy furnished Engineer Department.

By Order:

WILLIAM TINDALL,
Secretary.

[SEAL]

M
Auditor
Eng'r. Dept.
Freund & Anderson

Official Copy,
W. TINDALL, *Sec'y.*

19 Filed November 23, 1906.

OFFICER OF ASSESSOR, D. C.

Book. S. R. Tax September 9, 1903.
Folio 100

ALICE BROOK-

TO THE DISTRICT OF COLUMBIA, DR.

Square 770, Lot Sub 26
For work done under Act of Congress approved—
May 19, 1896
Description of work—Connecting premises with water-main and Sewer.

$470.77

Interest at.....per cent from.....

Total.....

P

Received payment,

.....
Collector of Taxes.

20 Supreme Court of the District of Columbia.

Friday, December 7, 1906.

Session resumed persuant to adjournment, Hon. Thos. H. Anderson, Justice, presiding.

* * * * *

No. 48870 At Law.

ALICE BROOKE, Petitioner,

vs.

THE DISTRICT OF COLUMBIA, Respondent.

This cause came on to be heard upon the petition, the rule to show cause issued thereon, the answer of respondent thereto, and after argument thereon by counsel for the respective parties, was submitted to the Court for its consideration. Whereupon it is ordered that the prayer of the petition herein for a Writ of Certiorari be and is hereby granted, and said writ is hereby ordered to issue in accordance therewith.

21 *Stipulation for Hearing, etc.*

Filed January 11, 1907.

In the Supreme Court of the District of Columbia.

Law No. 48870.

ALICE BROOKE,

v.

THE DISTRICT OF COLUMBIA.

It is hereby stipulated that the Respondent will on or before Friday, January 18, 1907, file herein its return to the Writ of Certiorari heretofore issued herein, and that on said 18" day of January, 1907, said cause may, if agreeable to the Court, be heard upon its merits, and that copies of the records filed herein shall stand in the place and stead of the originals.

JOHN RIDOUT,

Atty. for Respondent,
E. H. THOMAS,
F. H. S.

Attys. for Pet.

22 *Motion.*

Filed January 16, 1907.

In the Supreme Court of the District of Columbia.

Law No. 48870.

ALICE BROOKE,

vs.

THE DISTRICT OF COLUMBIA.

Now comes the petitioner by her Attorneys, John Ridout and George C. Gertman, and on the return of the respondent herein to the Rule to show cause moves the Court to enter a judgment quashing the tax complained of in the petition herein.

JOHN RIDOUT,
GEO. C. GERTMAN,
Atty's. for Petitioner.

Jan. 11, 1907.

23 *Return to Writ of Certiorari.*

Filed January 21, 1907.

In the Supreme Court of the District of Columbia.

At Law, No. 48870.

ALICE BROOKE, ?

v.

THE DISTRICT OF COLUMBIA.

Now comes the defendant, by its attorney, and for return to the writ of certiorari herein, adopts in full the return to the rule to show cause, heretofore filed in this case.

E. H. THOMAS
F. H. STEPHENS,
Attorneys for Defendant.

24 Supreme Court of the District of Columbia.

Friday, February 8, 1907.

Session resumed pursuant to adjournment, Hon. Thos. H. Anderson, Justice, presiding.

* * * * *

No. 48870 At Law.

ALICE BROOKE, Petitioner,

vs.

THE DISTRICT OF COLUMBIA, Def't.

This cause having been argued by counsel for and submitted to the Court on the Writ of Certiorari and the return thereto filed herein by Respondent, it is by the Court, this Eighth day of February, 1907, adjudged that the tax or assessment of $470.77 levied against sub lot numbered twenty-six (26) in square numbered seven hundred and seventy (770), in said District, belonging to Petitioner, for connecting said property with water and sewer, is illegal and void, and said tax or assessment for said work is hereby quashed and held for naught

and respondent is forthwith directed to cancel the same on its tax records.

From the aforegoing the respondent in open court, notes an appeal to the Court of Appeals.

25 *Order for Transcript of Record.*

Filed February 13, 1907.

In the Supreme Court of the District of Columbia.

At Law, No. 48870.

ALICE BROOKE,

v.

DISTRICT OF COLUMBIA.

The Clerk will please prepare a transcript of the record in the above entitled case, for the Court of Appeals, consisting of:

1. The petition.
1. The rule to show cause why the writ should not issue.
3. The answer to the rule; two parts
4. Order directing the writ to issue
5. Answer to the writ
6. Motion to quash return
7. Judgment, quashing return and directing cancellation of the assessment, and
8. The appeal noted in open court
9. This order for transcript.

E. H. THOMAS,
F. H. STEPHENS,
Attorneys for the Defendant.

26. Supreme Court of the District of Columbia

UNITED STATES OF AMERICA, *District of Columbia, ss:*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 25, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, a copy of which is made part of this transcript, in cause No. 48870 At Law, wherein Alice Brooke, is Petitioner, and The District

of Columbia, is Respondent, as the same remains upon the files and of record in said Court.

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of said Court, at the city of Washington, in said District, this 20th day of March, A. D., 1907.

JOHN R. YOUNG,

[SEAL] *Clerk.*

[Endorsed on cover:] District of Columbia, Supreme Court. No. 1770. The District of Columbia, Appellant *vs.* Alice Brooke. Court of Appeals, District of Columbia. Filed Mar. 21, 1907. Henry W. Hodges, Clerk.

ADDITION TO RECORD PER STIPULATION OF COUNSEL.

COURT OF APPEALS, DISTRICT OF COLUMBIA:

APRIL TERM, 1907.

No. 1770.

No. 2 Special Calendar.

THE DISTRICT OF COLUMBIA, APPELLANT,

vs.

ALICE BROOKE.

FILED APRIL 6, 1907.

Court of Appeals of the District of Columbia.

No. 1770.

DISTRICT OF COLUMBIA,

v.

ALICE BROOKS.

The parties hereto, by their counsel, consent that the transcript of record filed in the above case may be amended by adding thereto the writ of certiorari issued by the court below, and

that the said writ shall be treated as if it had been originally filed with the transcript of record herein.

E. H. THOMAS,
F. H. STEPHENS,
Attorneys for District of Columbia.

JNO. RIDOUT,
GEO. C. GERTMAN,
Attorneys for Alice Brooks.

Writ of Certiorari.

In the Supreme Court of the District of Columbia.

Law No. 48870.

ALICE BROOKE, Petitioner,

vs.

THE DISTRICT OF COLUMBIA, Respondent.

The President of the United States of America to the District of Columbia, Greeting:

You, the District of Columbia, are commanded to certify to this Court immediately, a copy of each and every part of the record in your custody relating in any manner to a charge or charges, tax or assessment, in the name of Alice Brooke, against sublot No. Twenty-six (26) in Square numbered Seven hundred and seventy (770) in the City of Washington, District of Columbia, for connecting said Lot with sewer and water main, made and done under supposed authority of the Act of Congress approved May 19, 1896, titled "An Act to provide for the drainage of lots in the District of Columbia," including all notices, returns, advertisements, contracts, specifications, drawings, blue prints, assessments, entry or entries on tax book, name of tax book, and all minutes or proceedings had by said Respond-

ent or the Commissioners of the District of Columbia, as a Board or otherwise, concerning said matter.

Witness the Honorable HARRY M. CLABAUGH, Chief Justice of the Supreme Court of the District of Columbia, this 7th day of December, A. D. 1906.

[SEAL.] J. R. YOUNG, *Clerk*,
By FRED. C. O'CONNELL, *Asst. Clerk*.

Marshal's Return.

Served copy of the within writ on the District of Columbia by service on Henry L. West, one of the Commissioners of said District of Columbia, personally, Dec. 7, 1906.

AULICK PALMER,
Marshal.

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

I, JOHN R. YOUNG, Clerk of the Supreme Court of the District of Columbia, do hereby certify the foregoing to be a true copy of the WRIT OF CERTIORARI, issued on the 7th day of December, A. D. 1906, in cause No. 48870, AT LAW, wherein ALICE BROOKE, is Petitioner, and THE DISTRICT OF COLUMBIA, is Respondent, as the same remains upon the files and of record in said Court.

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of said Court at the City of Washington, in said District, this 5th day of April, A. D. 1907.

J. R. YOUNG, *Clerk*.
By ALF. G. BUHMAN, *Asst. Clk*.

[Endorsed:] No. 1770. The District of Columbia, Appellant, *vs.* Alice Brooke. Addition to Record for Stipulation of Counsel. Court of Appeals, District of Columbia, filed Apr. 6, 1907. Henry W. Hodges, Clerk.

WEDNESDAY, *April 10th*, A. D. 1907.

No. 1770.

THE DISTRICT OF COLUMBIA, Appellant,
vs.
ALICE BROOKE.

The argument in the above entitled cause was commenced by Mr. F. H. Stephens, attorney for the appellant, and was continued by Mr. John Ridout, attorney for the appellee, and was concluded by Mr. F. H. Stephens, attorney for the appellant.

No. 1770.

THE DISTRICT OF COLUMBIA, Appellant,
vs.
ALICE BROOKE.

Opinion.

(Mr. Justice ROBB delivered the opinion of the Court:)

This is an appeal from a judgment of the Supreme Court of the District on the return of a writ of certiorari quashing and vacating certain proceedings taken for assessing a drainage tax under the authority of the Act of May 19th, 1896, (29 Stat. 125), entitled "An Act to Provide for the Drainage of Lots in the District of Columbia."

The petitioner, appellee here, represents that she is a resident of Silver Spring, in the State of Maryland, and the owner in fee simple of sublot 26, in square No. 770, in the District of Columbia; that said lot is improved by a row of five dwelling houses; that the District by virtue of said Act has connected said premises with the water main and sewer on which said lot fronts and has assessed the charges therefor in the sum of $170.77, and has caused said assessment to be placed against said lot on the tax roll of said District as provided by said Act.

The petition further avers that said Act is unconstitutional and void because it discriminates between owners of real estate in said District and because it is not uniform and capable of universal enforcement. The petition also avers that assuming the validity of said Act it does not appear that petitioner was a non-resident at the time that the work was done for which said assessment was made, or "that the Commissioners of said District, either as a board or individually, gave the legal and official notice to the owner of said property as is required by said Act."

A rule to show cause why the writ prayed for should not issue was granted, and a return to the rule made. This return consisted of a formal answer, signed and sworn to by the three Commissioners of the District, to which was attached copies of such pertinent official papers and records as were in the custody of the District. If any

objection was made to this return the record fails to state it. The record does state, however, that a hearing was had "upon the petition, the rule to show cause issued thereon, and the answer of respondent thereto." As a result of this hearing the writ was ordered to issue. Thereupon the District adopted for its return to the writ the return to the rule to show cause, and the record fails to disclose that any objection was then made to either the form or the substance of the return. A hearing was had "on the writ of certiorari and the return thereto" which resulted in the quashing and setting aside of said tax or assessment.

The first question presented is, whether it is competent for this court to consider the sworn return of the Commissioners in determining whether the requisite notice was given petitioner. It will be observed that the petitioner does not allege in her petition that she did not have legal and sufficient notice. She merely alleges that "it does not appear" that she had such notice. The function of the writ of certiorari is to prevent and not to promote injustice. It is not a writ of right, but one to be issued in the discretion of the court and it is never issued except for the purpose of effecting substantial justice. District of Columbia *v.* Burgdorf, 6 App. D. C. 465. The writ lies to review and correct proceedings of tribunals exercising judicial or quasi-judicial powers, and that do not proceed according to the course of the common law. The records of such tribunals are frequently imperfect and lacking in completeness. The practice, therefore, obtains in many jurisdictions and has obtained in this jurisdiction of requiring a petition and answer thereto in the form of a return prior to granting the writ "to enable the court to deal with the substantial justice of the case untrammeled by merely formal and technical defects in the record." Bailey on Jurisdiction, Sec. 434a and cases cited. In many jurisdictions great liberality is allowed in this preliminary return or answer and in some jurisdictions even affidavits are then considered. In the case of Inhabitants of Tewksbury *v.* County Commissioners of Middlesex, 117 Mass. 563, which was a petition for a writ of certiorari to quash the proceedings of the County Commissioner in discontinuing a certain street, the court said:

"To enable the court to deal with the whole case upon the petition, it is necessary, and such is the established practice, for the commissioners or other inferior tribunal, to answer the petition, to return a copy of their record, except when it is annexed to the petition, and if the record does not state in detail all the facts proved and rulings made, necessary for the determination of the case, to make a return or certificate, stating fully such facts and rulings so far as necessary to raise the questions of law which the petitioners desire to have revised by this Court, and such return is conclusive as to all matters of fact within the jurisdiction of the inferior court, and cannot be impeached or controlled by the petitioners. As stated in Mendon *v.* County Commissioners, 5 Allen 13, the rights of all persons have a sufficient protection, in being intrusted to public officers, clothed with important public duties, who are under oath for their faithful performance, and who cannot be supposed to have any

interest or bias to misrepresent or suppress the actual facts as they took place before them."

The answer or return thus made is as much a part of the record as the official papers filed therewith, for said the Court in Worcester & Nashua Railroad Company *v.* Railroad Commissioners, 118 Mass. 561:

"The answer of the respondent, when it states any facts, is in the nature, not of an allegation of the party, but to an official return, conclusive in all matters of fact, and should be signed by the members of the tribunal, and not by an attorney."

The part of the return in the present case now objected to is as follows:

"Respondent says that diligent search was made by the officers and agents of the respondent to find the said petitioner within the District of Columbia, but she could not be found there after such diligent search. That the petitioner was informed and believed and still believes that the said petitioner was at the time of the performance of the acts complained of, and is now a citizen of the State of Maryland, and resides and did reside at Silver Hill, Maryland.

"Respondent further says that the Commissioners of the District of Columbia through their officers and agents did give legal and official notice to the said petitioner as required by the said Act of Congress. That notice was given by publication as required by the said Act and said notice was also sent to the said petitioner at Silver Hill, Maryland, postage prepaid by registered letter, on March 14, 1903, and was received by said petitioner on March 16, 1903, the registry return receipt with the signature of the petitioner, a copy of which is filed herewith as exhibit hereto and is prayed to be read as a part hereof, and the original thereof will be exhibited to the Court on the hearing of said rule."

Petitioner having discovered that the record of the proceedings leading up to the assessment was not full and complete in that it did not contain a recital of the *fact* that notice had been mailed her attempted to take advantage of that purely technical defect. It thereupon became the duty of the Commissioners in their return to the rule to state all the facts that the court might not be misled. Upon the granting of the writ had objection been made to the adoption by the Commissioners of their preliminary return the court undoubtedly would have permitted an amendment to the record for the purpose of supplying the defects now complained of by petitioner. Having then made no objection to the form of the return it is too late to do so now.

The sole object of this act is to provide for connecting certain improved premises in the District with public sewers and water mains. Legislation to effect such an object is a proper and legitimate exercise of police power. While courts will consider the purpose of an act they will not contravene certain established principles in giving it force and effect. The subject here dealt with is one easily controlled. No complicated machinery is necessary since there is but one thing to be done and that is the removal of a real or potential menace to the public health by resorting to the simple expedient of connecting offending premises with the public sewer

and water main. The premises controlled are within the jurisdiction where in the nature of things they are likely to remain. It would seem, therefore, that, no difficulty ought to be encountered in framing an act which in its practical operation would not only be unform but effectual. Does the present Act meet this very simple but very necessary requirement?

The first section of the Act is free from objection because it imposes a proper and uniform burden upon all improved lots in the District. The second section is also uniform in all its provisions. The third section prescribes the same punishment for all delinquents and, therefore, is not open to objection.

The discrimination found in the fourth section we deem fatal and clearly within the ruling of this Court in McGuire *v.* District of Columbia, 24 App. D. C., 22. That case involved the constitutionality of the Snow and Ice Law for the District, which authorized the Commissioners to remove snow and ice in front of unimproved or vacant lots at the expense of the owners thereof, but did not give the Commissioners authority to remove snow and ice in front of improved property. It did provide, however, that if the tenant or occupant of improved property failed to remove the snow and ice, within a given time, he should be liable to fine or imprisonment. The court said,

"It is to be noticed that, if the tenant or occupant of improved property fails to remove the snow and ice in front of his property, there is no provision in the Act for the performance of the work by the Commissioners of the District. Their duty of removal in this connection extends only to the sidewalks in front of unimproved or vacant lots. Here, again, is gross inequality as well as utter failure to subserve the purpose of the law,—for the intervention of the Commissioners is as necessary in the one case as in the other.

"In excuse of the inequality here apparent, it is alleged that the owners of vacant lots are often non residents, and, when such, cannot be reached by the process of fine and imprisonment. But this plainly is not sufficient excuse; for either the assessment authorized to be made for the failure to remove the ice and snow, and the performance of that duty by the Commissioners, is a charge under the power to assess property for benefits or it is an exercise of the police power of the State or municipality. The former will scarcely be contended, and, if it were contended, it would lack the necessary element of uniformity. The charge must be sustained, if at all, under the police power; but here, again, the element of uniformity is equally requisite, and is equally wanting in the enactment. We cannot have one law for the resident and another for the non resident owner of real estate in this District."

The same discrimination is found in section four of the present Act, for it provides that, if "the owner or owners of any such lot be a *nonresident* or *nonresidents* of the District of Columbia, or cannot be found therein," the Commissioners shall give certain notice and upon the failure of such owner to comply therewith may *"cause such connection to be made,"* and all the expenses thereunder, *"shall be assessed as a tax against such lot."* Thus, it will be seen that, the real object of the law is certain to be effectuated

only in the case of nonresidents or persons who cannot be found in the District. As to the much larger number of resident owners, the law does not authorize any action by the Commissioners, but merely provides that if such owners decline to comply with the Act they shall be fined. Counsel for the District contend that this provision of the statute will have the effect of coercing compliance with the Act and, therefore, balances the above provision in reference to nonresidents. When the object of the statute is taken into consideration we do not think such a contention can be sustained.

The assessment and collection of a fine whether the same be large or small is not the object of this law. Its sole object is to promote the public health. The resident owner may be fined, he may in default of payment be sent to jail, but the cause of complaint is not removed. His premises continue to offend and so far as this law is concerned may continue to do so indefinitely, notwithstanding the police court proceedings. It may happen that the person in whose name the legal title to a given lot stands is financially unable to comply with this law. If he lives in the District or can be found here his *premises* may not be molested but *he* may be fined. If he cannot be found here the object of the law is easily effectuated and the expenses connected therewith become a charge upon the lot. The title to a lot may be so defective that the owner may be unable to raise the money with which *the* comply with the law. If he lives here he must pay a fine or go to jail but the Commissioners must keep away from his premises. If he does not live here the Commissioners may proceed to promote the public health by connecting his premises as the law provides.

But it is needless to multiply reasons why we cannot sustain this assessment. No valid reason occurs to us why premises in the District similarly situated should not be similarly dealt with. No valid reason has been suggested why the Commissioners should not be clothed with exactly the same authority over the premises of residents as the Act gives them over the premises of nonresidents. The discrimination in the Act being clear and to our minds unreasonable and unjust we are constrained to sustain the judgment of the court below quashing the tax.

For the reasons above given the judgment is affirmed with costs, and it is so ordered.

Affirmed.

TUESDAY, *May 7th*, A. D. 1907.

No. 1770, April Term, 1907.

THE DISTRICT OF COLUMBIA, Appellant,
vs.
ALICE BROOKE.

Appeal from the Supreme Court of the District of Columbia.

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia, and was argued by counsel. On consideration whereof, It is now here ordered

and adjudged by this Court that the judgment of the said Supreme Court in this cause, be, and the same is hereby, affirmed with costs.

Per Mr. Justice ROBB.

May 7, 1907.

Thursday, *May 23rd*, A. D. 1907.

No. 1770.

The District of Columbia, Appellant,
vs.
Alice Brooke.

On motion of Mr. E. H. Thomas, of counsel for the appellant, It is ordered by the Court that a writ of error to remove this cause to the Supreme Court of the United States issue; and it is further ordered that the mandate be stayed pending proceedings on said writ of error.

United States of America, *ss:*

The President of the United States to the Honorable the Justices of the Court of Appeals of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Appeals before you, or some of you, between The District of Columbia, Appellant, and Alice Brooke, Appellee, a manifest error hath happened, to the great damage of the said Appellant as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 23rd day of May, in the year of our Lord one thousand nine hundred and Seven.

[Seal Court of Appeals, District of Columbia.]

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

Allowed by

____ ____.

UNITED STATES OF AMERICA, *ss:*

To Alice Brooke, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Court of Appeals of the District of Columbia, wherein The District of Columbia is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Seth Shepard Chief Justice of the Court of Appeals of the District of Columbia, this 24th day of May, in the year of our Lord one thousand nine hundred and Seven.

SETH SHEPARD,
Chief Justice of the Court of Appeals of the District of Columbia.

Service accepted this 27th day of May, A. D. 1907.
JNO. RIDOUT.

[Endorsed:] Court of Appeals, District of Columbia. Filed May 27, 1907. Henry W. Hodges, Clerk.

Court of Appeals of the District of Columbia.

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 32 inclusive, contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of The District of Columbia, Appellant, *vs.* Alice Brooke, No. 1770, April Term, 1907, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 27th day of May, A. D. 1907.

[Seal Court of Appeals, District of Columbia.]

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

Endorsed on cover: File No. 20,776. District of Columbia Court of Appeals. Term No. 117. The District of Columbia, plaintiff in error, *vs.* Alice Brooke. Filed July 3, 1907. File No. 20,776.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 117.

THE DISTRICT OF COLUMBIA, PLAINTIFF IN ERROR,

v.

ALICE BROOKE.

BRIEF FOR THE PLAINTIFF IN ERROR.

E. H. THOMAS,
F. H. STEPHENS,
Attorneys for Plaintiff in Error.